IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3963 OF 2003

Nandkishor S. Malu).. Petitioner

Versus

Hanumanmal G.Biyani and others).. Respondents

Mr.R.S.Apte with Mr.A.A.Gorge for the Petitioner.
Mr.G.H.Keluskar for Respondent No.1(c).

CORAM: SMT.NISHITA MHATRE, J.

DATED: 26TH JULY 2005

P.C.:

. This Petition challenges the order dated 10th October 2002 passed below Exhibits 29, 38, 49 and 50 by the IInd Additional District Judge, Sangli in Regular Civil Suit No.577 of 1991. Exhibit 29 has been filed for bringing the heirs of Defendant No.1 on record. This application was filed after the Petitioner was informed of the death of the original Defendant No.1. The original Defendant No.1 expired on 7th May 1999. However, the Advocate for Defendant No.1 informed the Petitioner of his death only on 14th September 2000. Immediately thereafter Exhibit 29 was filed by the Petitioner for bringing the heirs on record. Thereafter, the Advocate for original Defendant No.1 informed the Petitioner that there were other heirs who were required to be brought on record, viz. the wife and daughter of the deceased original Defendant No.1.

Accordingly, Exhibit 38 was filed by the Petitioner for bringing the additional heirs on record. The Petitioner also filed an application for condoning the delay in filing the earlier applications Exhibits 29 and 38. This application was marked as Exhibit 49. Another application Exhibit 50 was preferred for setting aside the abatement.

2. By a common order dated 10th October 2002, the trial Court has decided these applications and held that in view of the delay of one year and five months in filing the applications for bringing the heirs on record, all the applications were rejected. The trial Court was of the view that the applications were not made bona fide. It has been observed by the trial Court that immediately after the death of original Defendant No.1, his photograph and news announcing his death was published in the daily news paper of 11th May 1999. The trial Court has then presumed that this news paper must have been read by the Petitioner and therefore he had the knowledge of his death.

3. Order 22 Rule 10A of the Civil Procedure Code stipulates that it is the duty of the Advocate to communicate to the Court the death of a party. Order 22 Rule 10A reads as under :-

> 10-A. Duty of pleader to communicate to Court death of a party. - Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

4. Therefore, in my opinion, the trial Court was clearly in error in presuming that the news paper report would suffice and the requisites of Order 22 Rule 10A would be complied. Unless the Court is informed of the death of a party by the Advocate appearing for that party, the other party cannot be deemed to have knowledge of the death of the party or of the legal heirs of that party. A newspaper report or advertisement cannot be a substitute for the procedure stipulated under the provisions of law. In such circumstances, the impugned order is clearly in breach of Order 22 Rule 10A of the Civil Procedure Code and is, therefore, required to be set aside.

5. Writ Petition allowed. The impugned order dated 10th October 2002 passed by the IInd Additional District Judge, Sangli below Exhibits 29, 38, 49 and 50 in Regular Civil Appeal No.577 of 1991 set aside. The applications Exhibits 29, 38, 49 and 50 filed by the Petitioner allowed.

6. The amount of Rs.5,000/- deposited by the Petitioner in this Court shall be handed over to the Respondents.